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MEMORANDUM



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AZ CORP COMMISSION
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TO: Docket Control Center

FROM: Steven M. Olea
Director
Utilities Division

DATE: July 1, 2010

RE: STAFF REPORT FOR KAYENTA ESTATES HOMEOWNER'S ASSOCIATION,
INCORPORATED'S APPLICATION FOR AN ADJUDICATION NOT A PUBLIC
SERVICE CORPORATION (DOCKET NO. W-20704A-09-0467)

Staff Report for Kayenta Estates Homeowner's Association, Incorporated's application for adjudication not a public service corporation. Staff recommends the Commission approve the application.

SMO:KS:lmh

ORIGINATOR: Kiana Sears

Arizona Corporation Commission
DOCKETED

JUL -1 2010

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SERVICE LIST FOR: Kayenta Estates Homeowner's Association, Incorporated
Docket No. W-20704A-09-0467

Ms. Ann P. Roberts, Esq.
Battaglia & Roberts, P. C.
Post Office Box 2315
Benson, Arizona 85602

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

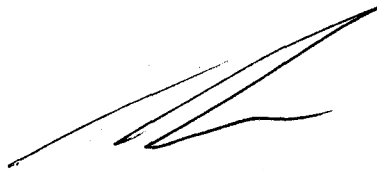
Ms. Lyn Farmer
Chief, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007


STAFF ACKNOWLEDGEMENT

The Staff Report for Kayenta Estates Homeowner's Association, Incorporated (Docket No. W-20704A-09-0467) was the responsibility of Kiana M. Sears for the review and analysis of the application. Del Smith was responsible for Staff's Engineering Report.



Kiana M. Sears
Executive Consultant



 Del Smith
Utilities Chief Engineer

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

KAYENTA ESTATES HOMEOWNER'S ASSOCIATION, INCORPORATED
AN ARIZONA NON-PROFIT CORPORATION

DOCKET NO. W-20704A-09-0467

APPLICATION FOR ADJUDICATION
NOT A PUBLIC SERVICE CORPORATION

JULY 1, 2010

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

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Kiana M. Sears
Executive Consultant

Del Smith
Utilities Chief Engineer

EXECUTIVE SUMMARY
KAYENTA ESTATES HOMEOWNER'S ASSOCIATION, INCORPORATED
(DOCKET NO. W-20704A-09-0467)

On September 23, 2009, the members of Kayenta Estates Homeowner's Association, Incorporated ("Kayenta Estates" or the "Company") in Cochise County, Arizona, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") seeking an adjudication for Kayenta Estates in order to have it considered not a public service corporation. The Kayenta Estates subdivision will consist of 27 lots, covering 80 acres of land, approximately one-eighth of one square mile, between Benson and St. David in Cochise County.

Kayenta Estates is an non-profit corporation established in April 9, 2009, to carry on any lawful business of the corporation and for the purpose of operating a not for public service water company to provide water service to the property owners of Kayenta Subdivision. Every person or entity who is a member of the corporation is or will be a customer of the water company. The Articles of the Covenants, Conditions and Restrictions ("CC&Rs") prohibits any further subdivision of the territory included within this application.

The criteria to determine that a water provider is not a public service corporation within the meaning of Article 15; Section 2 of the Arizona Constitution was established by the Arizona Supreme Court in Natural Gas Service v. Serv-Yu Cooperative, Inc. The court provided an eight point review criteria to aid the Commission in its evaluation. Subsequently, the Commission issued a policy directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568 which consisted of a seven (7) review criteria. Kayenta Estates filed documents that comply with the Commission's seven (7) criteria for adjudication. Staff recommends the Commission approve Kayenta Estates' application for adjudication not a public service company.

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INTRODUCTION

On September 23, 2009, the members of Kayenta Estates Homeowner's Association, Incorporated ("Kayenta Estates" or the "Company") in Cochise County, Arizona, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") seeking an adjudication for Kayenta Estates in order to have it considered not as a public service corporation. The Kayenta Estates subdivision will consists of 27 lots, covering 80 acres of land, approximately one-eighth of one square mile, between Benson and St. David in Cochise County.

Utilities Division Staff ("Staff") issued a letter of insufficiency on October 30, 2009. The Company amended its application on December 16, 2009.

On April 5, 2010, Staff filed a Sufficiency Letter indicating that the applications had met the sufficiency requirements of the Arizona Administrative Code.

BACKGROUND

Kayenta Estates is an non-profit corporation established in April 9, 2009, to carry on any lawful business of the corporation and for the purpose of operating a not for public service water company to provide water service to the property owners of Kayenta Subdivision. Every person or entity who is a member of the corporation is or will be a customer of the water company. The Articles of the Covenants, Conditions and Restrictions ("CC&Rs") prohibits any further subdivision of the territory included within this application.

THE PROPOSED WATER SYSTEM

A Preliminary Engineering Report ("Report") prepared by Physical Resources Engineering, Inc is attached to the Amended Application. The Report described a planned water system to serve the Subdivision. The described water system would consist of two wells (one existing well and one new well) each well able to supply water at a rate of 23 gallons per minute ("GPM"). Each well would pump water to a 20,000 gallon storage tank and each storage tank would supply water to a pressure pump and a 3,000 gallon pressure tank. The pressure pump and tank (or booster system) would deliver water at a minimum pressure of 50 pounds per square inch to the highest elevation lot within the subdivision. A looped water main of 6-inch diameter PVC pipe would be installed to provide fire flow and serve metered connections within the Subdivision. Staff concludes that the planned Subdivision water system would have adequate capacity to meet peak water use demand. According to the Amended Application each individual lot within the Subdivision would have a septic system.

The criteria to determine that a water provider is not a public service corporation within the meaning of Article 15; Section 2 of the Arizona Constitution, was reviewed by the Arizona Supreme Court in Natural Gas Service v. Serv-Yu Cooperative, Inc. The Court provided an eight review criteria for the Commission to review.

1. What the corporation actually does.
2. Whether the service is dedicated to public use.
3. That the articles of incorporation evidence authorization and purposes.
4. Whether the corporation is dealing with the service of a commodity in which the public has been generally held to have an interest.
5. Whether the corporation is monopolizing or intending to monopolize a territory with a public service commodity.
6. Whether the corporation is accepting of substantially all requests for service.
7. That service is under contract and reserving the right to discriminate is not always controlling.
8. Whether the corporation will have actual or potential competition with other corporations whose business is clothed with the public interest.

The Commission issued a directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. Staff was directed to ensure that all such applications complied with the following seven criteria:

1. Adjudication applications must be submitted by non-profit homeowners associations.
2. The application for adjudication not a public service corporation is a bonafide request by a majority of the membership of the association through a petition signed by 51 percent or more of the then existing members.
3. That all such associations making such application have complete ownership of the system and necessary assets.
4. That every customer is a member/owner with equal voting rights and that each member is or will be a customer.
5. That the service area involved encompasses a fixed territory, which is not within the service area of a municipal utility or public service corporation; or if in such territory, that municipal utility or public service corporation is unable to serve.
6. That there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations.

7. That the membership is restricted to a fixed number of customers, actual or potential.

COMPLIANCE TO DIRECTIVE NO. 1

Kayenta Estates was established as a non-profit corporation on April 9, 2009, to carry on any lawful business of the corporation and for the purpose of operating a not for public service water company to provide water service to the property owners of Kayenta Subdivision, thus complying with Directive No. 1.

COMPLIANCE TO DIRECTIVE NOS. 2 AND 3

The Kayenta Estates has been established for a subdivision that has not yet been developed. The application is submitted by the Homeowner's Association ("HOA") which represents all of the future owners. John Sully has conveyed the ownership of the well to Kayenta Estates and can be confirmed by documentation filed with Arizona Department of Water Resources ("ADWR"). Article VI, Section 3, Ownership of the Kayenta Estates Water System Assets., states all assets of the Kayenta Estates Water System shall belong to and be operated, maintained and controlled by the Association.

COMPLIANCE TO DIRECTIVE NO. 4

Item No. 4 in the Articles of Incorporation states:

"Every person or entity who is an owner of a fee interest in any lot within Kayenta Estates Subdivision, which is, or becomes subject to, assessment by the corporation, shall be a member corporation of the corporation and every member who is a customer of the not for public service water company shall have equal voting rights." The CC&Rs also include a section regarding voting rights in Section 2. This section gives specific detail regarding 1 vote per customer and details that the maximum numbers of votes will be 27.

COMPLIANCE TO DIRECTIVE NOS. 5, 6 AND 7

Compliance Item Nos. 5 and 6 are separate, but related issues so Staff has chosen to group them together. The Company has submitted coordinates, that have been mapped by Staff, of a specific area which is attached to the application and presented as the fixed area of the applicant of the proposed development. The Kayenta Estates subdivision will consists of 27 lots, covering 80 acres of land, approximately one-eighth of one square mile, between Benson and St. David in Cochise County. The CC&Rs have several sections in which it addresses, that the subdivision will have 27 customers as a maximum and a maximum of 27 eligible votes. These issues are addressed in Article I, Section 11, Article II Section 2 and Article VI, Section 1.

Article VI, Section I states, "No lot or lots as shown hereon shall again be subdivided, resubdivided, altered or changed as to produce less area than hereby established.

Arizona Department of Environmental Quality ("ADEQ") Compliance

There is no ADEQ compliance status to report.

Arizona Department of Water Resources ("ADWR") Compliance

The water system is not located within an ADWR Active Management Area or regulated as a community water system by ADWR.

Commission Compliance

The Applicant has not been regulated by the Commission in the past therefore there is no Commission Compliance to report.


Recommendation

Staff recommends that Kayenta Estates Homeowner's Association, Incorporated application for an adjudication not a public service corporation be approved.

MEMORANDUM

DATE: April 22, 2010

TO: Kiana Sears
Executive Consultant

FROM: Del Smith 
Engineering Supervisor

RE: IN THE MATTER OF THE APPLICATION OF KAYENTA ESTATES
HOMEOWNER'S ASSOCIATION, INC. FOR ADJUDICATION NOT A
PUBLIC SERVICE CORPORATION (DOCKET NO. W-20704A-09-0467)

Introduction

On September 29, 2009, Kayenta Estates Homeowners Association, Inc. ("Applicant") filed an application with the Arizona Corporation Commission ("Commission") seeking adjudication not a public service corporation. On December 16, 2009, Applicant filed an Amended Application for Adjudication not a Public Service Corporation ("Amended Application"). Applicant plans to construct a water system to serve the Kayenta Estates subdivision ("Subdivision") which will consist of 27 lots. The Subdivision as planned covers an 80 acre tract of land (approximately one-eighth of one square mile) between Benson and St. David in Cochise County.¹

Planned Subdivision Water System

Attached to the Amended Application was a Preliminary Engineering Report ("Report") prepared by Physical Resources Engineering, Inc. The Report described a planned water system to serve the Subdivision. The described water system would consist of two wells (one existing well² and one new well) each well able to supply water at a rate of 23 gallons per minute ("GPM"). Each well would pump water to a 20,000 gallon storage tank and each storage tank would supply water to a pressure pump and a 3,000 gallon pressure tank. The pressure pump and tank (or booster system) would deliver water at a minimum pressure of 50 pounds per square inch to the highest elevation lot within the subdivision. A looped water main of 6 inch diameter PVC pipe would be installed to provide fire flow and serve metered connections within the Subdivision. Staff concludes that the planned Subdivision water system would have adequate capacity to meet peak

¹ The Subdivision (of 27-3 acre lots) is located two miles east of Highway 80 and two and one half miles from Interstate 10, in Section 30, Township 17 South, Range 21 East.

² Included in the Amended Application were documents filed with the Arizona Department of Water Resources indicating that ownership of the one existing well had been transferred to the Applicant.

water use demand.³ According to the Amended Application each individual lot within the Subdivision would have a septic system.

Arizona Department of Environmental Quality (“ADEQ”) Compliance

ADEQ was contacted to verify that because the Applicant is not currently providing water service in the designated Subdivision area there is no ADEQ compliance status to report.⁴

Arizona Department of Water Resources (“ADWR”) Compliance

The Subdivision water system is not located within an ADWR Active Management Area or regulated as a community water system by ADWR.⁵

Commission Compliance

The Applicant has not been regulated by the Commission in the past therefore there is no Commission Compliance to report.

³ Based on an assumed peak use of 500 gallons per day per connection with fire flow of 500 GPM for one hour.

⁴ Status confirmed as of October 27, 2009.

⁵ ADWR Water Provider Compliance Status Report dated November 3, 2009.

MEMORANDUM

TO: Kiana Sears
Executive Consultant I
Utilities Division

FROM: Barb Wells *bw*
Information Technology Specialist
Utilities Division

THRU: Del Smith *DS*
Engineering Supervisor
Utilities Division

DATE: October 26, 2009

RE: **KAYENTA ESTATES HOMEOWNER'S ASSOCIATION, INC. (DOCKET NO. W-20704A-09-0467)**

Kayenta Estates has filed an application for adjudication "not a public service corporation." The area they are requesting is not being served by any other private water company and has been plotted on my maps using the legal description provided with the application (a copy of which is attached).

Also attached is a copy of the map for your files.

:bsw

Attachments

cc: Ms. Ann P. Roberts
Ms. Deb Person (Hand Carried)
Mr. Del Smith

COCHISE COUNTY

Map No. 11

RANGE 21 East

06	05	04	03	02	01
07	08	09	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

TOWNSHIP 17 South



(2) (Nonjurisdictional)

St. David Water Improvement District



(1)

Kayenta Estates Homeowner's Association, Inc.
Docket No. W-20704A-09-0467
Application for Adjudication

If the answer is yes, is this area within an Active Management Area ("AMA") as determined by the Arizona Department of Water Resources?
Yes _____ No X

C. How will wastewater be addressed within the HOA?

Each individual lot of approximately three (3) acres will have a septic system.

D. Is this application is being submitted by a non-profit homeowner's association? Yes X No _____ If no, please review the seven criteria for adjudication not a public service corporation.

E. Is this application for adjudication not a public service corporation a bona fide request by a majority of the membership of the association through a petition signed by 51% or more of the then existing members? Yes _____ No X. If yes, please submit petitions. If no, a signed and notarized resolution must be filed in lieu of a petition.

F. Please provide a legal description of the area to be adjudicated (cadastral or metes and bounds).

The North half of the Northeast Quarter of Section 30, Township 17 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, State of Arizona, more particularly described as follows:

Beginning at the Northeast quarter of said Section 30, monumented by a 3" open pipe tagged LS5980;

Thence along the East line of said Northeast quarter of Section 30, South $00^{\circ}43'44''$ East a distance of 1332.84 feet to the Southeast corner of said North half of the Northeast quarter;

Thence along the South line of said North half North $89^{\circ}58'42''$ West a distance of 2643.91 feet to the Southwest corner of said North half;

Thence along the West line of said North half North $00^{\circ}49'01''$ West a distance of 1330.39 feet to the Northwest corner of said Northeast quarter, being monumented by a 3" open pipe;

Thence along the North line of said Section 30, North $89^{\circ}58'05''$ East a distance of 2645.92 feet to the Northeast corner of said Section 30 and the Point of Beginning.

Said parcel contains 80.85 acres more or less.